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SUPREME COURT, U.S.
FILED
99 797 NOV 5 - 1999
OFFICE OF THE CLERK

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

RAY GEORGE SOUTHWELL, I,--PETITIONER

VS.

COMMISSIONER OF INTERNAL REVENUE
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RAY GEORGE SOUTHWELL, I
P.O. BOX 445
ALANSON, MICHIGAN 49706
231-529-6646

17 P

QUESTIONS PRESENTED

1.Government publications gave the definition of a fair hearing. These publications lead this Citizen to a certain expectation of the judicial process. The Government changed what had been written as to the process. What constitutes a fair hearing?

2.The Declaration of Independence documented some of the peoples Inalienable Rights to "alter or abolish" government. The Ninth and Tenth Amendments continue the documentation of these Inalienable Rights. Has the Government removed the Citizens Inalienable Right to peacefully "alter or abolish" a corrupt government by stopping or decreasing our financial support?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

OPINIONS BELOW---------- 1

JURISDICTION---------- 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED---------- 2

STATEMENT OF THE CASE---------- 4

REASON FOR GRANTING WRIT---------- 5

CONCLUSION---------- 7

INDEX TO APPENDICES

APPENDIX A ORDER OF DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

APPENDIX B ORDER OF DISMISSAL AND DECISION OF UNITED STATES TAX COURT.

APPENDIX C NOTIFICATION OF RECEIPT OF PETITION

APPENDIX D PETITIONER OBJECTION TO TAX COURT ORDER, DATED MARCH 17,1998

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

1 BRADFIELD V. ROBERTS (175 U.S. 168)---------- 3
2. DRED SCOTT V. SANFORD (60 U.S. 393)---------- 6
3.FARMER V. ROUNTREE (149 F. Supp. 329)---------- 3
4.FLORA V. UNITED STATES (4 Led 2d 623)---------- 6
5.HARRISON V. COMMISSIONER (107 F.2d 341)---------- 3
6.UNITED STATES V. COOK (311 F. Supp.618)---------- 2
7.UNITED STATES V. CHOATE (576 F.2d 167)----------2

FORMING DOCUMENTS OF THE NATION

1.DECLARATION OF INDEPENDENCE---------- 2
2. NINTH AMENDMENT TO THE U.S. CONSTITUTION--- 2
3.TENTH AMENDMENT TO THE U.S. CONSTITUTION--- 2

STATUTES AND RULES

1. Internal Revenue Code (26 U.S.C.)
    a.6012---------- 3
    b.7458---------- 3
2. 1 U.S.C. 1---------- 3
3. 28 U.S.C. 1254 (1)---------- 1
3. Rules of the Supreme Court of the United States
    a. Rule 10---------- 5

MISCELLANEOUS

1.Government Publications
    a. IRS publication 5 (rev. 11/90) Catalog #460741----- 3
    b. Tax Court publication November 1990
    "Election of Small Tax Case Procedure and
    Preparation of Petitions---------- 3

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of dismissal and decision of the United States tax court appears at Appendix B to the petition an is unpublished

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 10,1999.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court in invoked under 28 U.S.C. 1254 (1)

Constitutional and Statutory Provisions Involved

Citizen Southwell has spent a great deal of time studying the formations of governments and the history of our Constitution. This Citizen recognized the historical truth of the Second Amendment and has been instrumental in the development of the militia movement in Michigan and the Nation. As this Citizen studied and understood the Constitution regarding the Second Amendment, I now understand the Constitution regarding the Declaration of Independence, the Ninth and Tenth Amendments in relationship to a Citizens Rights and obligation.

1. Declaration of Independence

a."We hold these Truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness... whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or abolish it..."

b)The Declaration of Independence formed this Nation. It was and still is the first documentation of some of the peoples Inalienable Rights within our current Government.

2. The Ninth Amendment to the U.S. Constitution

a."The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

b. In United States of America v. Cook (311 F. Supp.618) The Court stated the "purpose of the Ninth Amendment is to guarantee to individuals those rights inherent to citizenship in a democracy which are not specifically enumerated in Bill of Rights."

c. In United States v. Choate (576 F.2d 167) the Ninth Circuit said " Rights under the Ninth Amendment are only those so basic and fundamental and so deep-rooted in society to be truly essential but which nevertheless cannot find direct support elsewhere in the Constitution.

3.The Tenth Amendment to the U.S. Constitution

a. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

4.26 USC 6012 never use the term Citizen. The "tax scheme" is vague in relationship to Citizen. Written language is very important in drafting laws. According to 26 USC 6012 "Persons required to make returns of income ... every individual, corporation, estate, trust, political organization, homeowners association." 1 USC 1 states " person and whoever include corporation, companies, associations, firm, partnerships, societies and joint stock companies as well as individuals." In Farmer v. Rountree (149 F. Supp. 329) and Bradfield v. Roberts (175 U.S. 168) the Court shows a distinct difference between taxpayer and Citizen.

5. 26 USC 7458 states "hearing contemplates reasonable opportunity to be heard in presentation of evidence and argument."

a. Harrison v. Commissioner (107 F.2d 341). "Reasonable opportunity" to be heard would allow all parties the time to prepare their cases. Citizen Southwell had less than 30 days to prepare and did object to the Tax Court in a timely manner.

b. The United States Tax Court Publication dated November 1990 "Election of small Tax Case Procedure and preparation of Petitions" page 6 defines reasonable opportunity as "about 60 days before trial." Because the hearing became a trial, with the dismissal, this Citizen did not have a fair hearing to present the evidence and argument

c. IRS publication 5 (Rev 11/90) Catalog Number 460741 states "The Court will schedule your case for trial at a location convenient to you." This Citizen requested Detroit and the Tax Court agreed to that location.(Appendix C)

6. Citizen's disability in written communication

a This Citizen also understand his limits of communication in written form. This Citizen see's this limit as a disability. Citizen Southwell also objected to the Tax Court concerning his disability.(Appendix D) Citizen Southwell was

fearful of not being understood if he was not able to be present during the hearing. With Judge Peter J. Anuthos comments in the "Order of Dismissal and Decision," (Appendix B) and the Sixth Circuit Opinion and Order (Appendix A), it is clear that this Citizen's fears were realized.

Statement of the Case

Ray George Southwell, I, is 48 years old. This Citizen has been a devoted husband for 29 years and a proud father of three grown children. Citizen Southwell served this Nation in the USNR during the Vietnam War. Citizen Southwell is not protesting taxes. This Citizen has filed and paid Federal Taxes from 1966 through 1991. This Citizen realizes taxes are needed to support a just Government. Citizen Southwell has been a Registered Nurse since 1976. This Citizen, also has been a Real Estate broker during that time. People have known this Citizen as having a caring attitude. This Citizen has spent the last several years working in an inner city ER and has seen the hopelessness on the faces of the children.

Ray George Southwell, I, lawfully chose not to file income tax forms or take any business or personal deductions since 1991. On November 7,1997 IRS issued separate notices of deficiencies to Citizen for 1992, 1993, 1994, and 1995. Citizen Southwell filed a timely petition for redetermination with the United States Tax Court on January 26,1998. On March 13,1998 IRS filed a Motion to Dismiss for failure to State a Claim upon Which Relief Can Be Granted. On March 17,1998 (received March 24,1998) Chief Judge Mary Ann Cohen with the United States Tax Court issued an order for Citizen Southwell to file an amended petition. Chief Judge Mary Ann Cohen also set a hearing date of April 22,1998 in Washington D.C. On March 25,1998 Citizen Southwell filed a timely Amended Petition as ordered by the Court. The Amended Petition stated

> "This Citizen's religious, moral, and conscientious strengths give me the courage to exercise my

Constitutional (inalienable) Rights to alter or abolish the governmental injustice and corruption. Given no other alternative in protecting our children, it is my right, my obligation, my duty as a Citizen, to stop paying for the injustice and corruption, what ever the cost. Being a peaceful man, I see this exercise of my rights as the only peaceful remedy left..."

Also on March 25,1998 Citizen Southwell filed a timely objection to Tax Court order related to the location and date of hearing (Appendix D) (April 22, 1998-Washington D.C.)Government publications explained that the location would be in Detroit and I would be given 60 days to prepare. On April 17,1998 Citizen Southwell filed a timely Response to the IRS Motion to Dismiss, under this Citizen's objection. April 22,1998 a hearing occurred at the United States Tax Court in Washington D.C. before Chief Special Trial Judge Peter J. Panuthos. Citizen Southwell was unable to attend. On April 27,1998 Chief Special Trial Judge Peter J. Panuthos issued an Order of Dismissal and Decision.(Appendix B) The Tax Court did not address the question I raised. This Citizen filed a timely Notice of Appeal with the Sixth Circuit Court of Appeals. August 10,1999, Sixth Circuit Opinion and Order was filed.(Appendix A) Once again the Court did not address my questions. I do not believe the Sixth Circuit read my Brief. In the written Order and Opinion the Court did not represent my proper name. This represents the carelessness and the arrogance of the Sixth Circuit.

REASONS FOR GRANTING THE PETITION

This petition should be granted for two compelling reasons. Under Rule 10 these reasons deal with conflicts with case law decisions and the conflict with Constitutional law. The other reason for granting the petition is concerning the National importance.

1.The first issue deals with conflicting law.

a. The Declaration of Independence is the establishing document of the Nation. We have had several different governments since the forming of the Nation. The

Inalienable Right to "alter or abolish" a corrupt government peacefully through non-financial support has never been removed. The Declaration of Independence has been allowed to be presented in the Supreme Court of the United States, in support of Citizens' Rights; establishing the precedent of the continuation of those rights even with a change in government. (Dred Scott v. Sanford 60 U.S. 393) A just government would give the Citizens all possible peaceful forms of changing government.

b. The Supreme Court has ruled on one of the questions I raise concerning a Citizens Right for stopping our financial support. In Flora v. United States (4 Led 2d 623) the Court stated " the federal system of taxation is based upon voluntary assessment and payment, not upon distraint." The IRS, Tax Court, Justice Department and most recently the Sixth Circuit have not presented contrary Supreme Court case Law opposing this decision.

2.The second issue is the National importance of this question.

a. Millions of Americans are not filing or paying their "Income Tax." they believe they have a right of non-financial support. The lower courts only resort to name calling and do not address the question. This question must be answered once and for all by this Court.

b. Millions of Americans are frightened and angry concerning the level of corruption and the difficulty stopping it. Throughout the history of man, the people have always been a branch of government. People have violently revolted against corrupt and unjust governments, when all other alternative approaches are gone. It is a Right that President Lincoln called a Revolutionary Right. Today in the United States We the People are the Fourth Branch of Government.

As Co-founder of the Michigan Militia, I continue to prepare for anarchy and revolution. I am in tune with millions of Americans, who also are frightened of the Government, as it exists today, in this great Nation. In recent years, militia members have been convicted for alleged terrorist attacks or alleged threatened attacks. Many militia

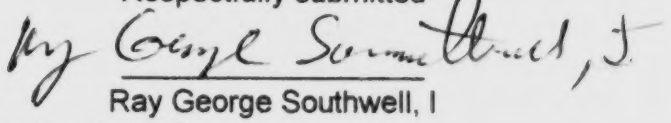
members see no peaceful alternative left. The FBI recently stated they see the militias as a threat in the new Millennium. This alleged threat is explained in the FBI report *Project Megiddo*. The militias will stand against tyranny and injustice, and in that sense, we are a threat against this corrupt Government. This Court must recognize the need to examine the evidence and argument with the questions raised.

This Citizen is a loving peaceful man, and is attempting to show the people this peaceful option, to "alter or abolish" government and give these frightened and angry Citizens a peaceful alternative to changing Government. This issue is important to the public. This Court cannot ignore the question raised by many Americans. Has the Government taken this Inalienable Right away from the Citizens. People throughout the ages supported governments and have established governments as our Constitution states " to form a more perfect union, establish justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity..." The Patriots of 1776 used their violent Revolutionary Right when all other peaceful options to"alter or abolish" their government ended. When government becomes as destructive to the people as anarchy, We the people must "alter or abolish" such corrupt government, for all our children's sake. The power of governing must remain in the hands of the people. This power will remain in the hands of the people. The last question I ask is whether it will remain by peaceful means or violent means? It is with respect that I say this Court must review the question.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted



Ray George Southwell, I

Date: November 3, 1999

No 98-1796

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAY GEORGE SOUTHWELL, II Petitioner- Appellant,	) FILED) AUG 10 1999) LEONARD GREEN
v.	) CLERK
COMMISSIONER OF INTERNAL REVENUE,	) ORDER
Respondent-Appellee-	)

NOT RECOMMENDED FOR FULL TEXT PUBLICATION
Sixth Circuit Rule 206 limits citation to specific situations. Please see Rule 206 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the court.
This notice is to be prominently displayed if this decision is reproduced.

Before: JONES, SILER, AND GILMAN, Circuit Judges.

Ray George Southwell, II, pro se, appeals an order of the United States Tax Court which dismissed for failure to state a claim his petition for review of a notice of tax deficiency issued by the Commissioner of Internal Revenue ("Commissioner") and assessed additional penalties against him pursuant to 26 U.S.C. 6651(a) and 6654(a). This case has been referred to a panel of the court pursuant to Rule (j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On November 7, 1997, the Commissioner issued separate notices of deficiency to Southwell determining deficiencies in and additions to his Federal income taxes for 1992,1993,1994, and 1995.The Commissioner determined that Southwell failed to report nonemployee compensation and wages that he earned during the taxable years 1992 through 1995.

Southwell filed a timely petition for redetermination with the tax court on January 26,1998. The petition states: "I owe no additional tax or penalty or interest because of religious, moral and conscientious grounds." At the time the petition was filed, Southwell resided in Alanson, Michigan.

On March 13, 1998, the Commissioner filed a motion to dismiss for failure to state a claim upon which relief can be granted. By order dated March 17,1998, Southwell was directed to file a proper amended petition setting forth with specificity each error allegedly made by the Commissioner in the determination of the deficiencies and seoarare statements of every fact upon which the assignments of error were based.

On March 30,1998, Southwell filed an amendment to the petition repeating the allegations contained in the original petition. On the same date, Southwell filed an objection to the tax court's order dated March1 7,1998, insofar as the Commissioner's motion to dismiss was set for a hearing in Washington, D.C. On April 20,1998, Southwell filed a response to the Commissioner's motion to dismiss repeating the allegations contained in the petition and asserting that he has a constitutional right to stop paying taxes because the government is corrupt and unjust.

On April 27,1998, the tax court entered its order of dismissal and decision which determined a deficiency of $2884 for 1992, $5157 for 1993, $749 for 1994, $926 for 1995, and additions to tax under 26 U.S.C. 6651(a) and 6654(a) in the respective amounts of $721 and $124 for 1992, $1289 and $215 for 1993, $187 for 1994 and $175 for 1995. This appeal followed. The Commissioner has filed a motion for sanctions pursuant to Fed. R. App. P. 38.

A tax court decision to dismiss a suit for failure to state a claim is reviewed de novo and the reviewing court applies the same standard as would a district court in the first instance. See 26 U.S.C. 7428(a);National Commodity & Barter Ass'n v. Gibbs, 886 F.2d 1240, 1243 (10th Cir. 1989). We have reviewed the petition and amended petition filed in the tax court and agree that it fails to set forth adequate information or legal arguments to support the conclusory claims therein that the Commissioner's determination of tax liability was erroneous. Under these circumstances, the tax court was justified in dismissing the petition under Rule 34(b). See Scherping v. Commissioner, 747 F.2d 478, 480 (8th Cir. 1984)

(per curiam)

The Commissioner requests the imposition of sanctions and the award of attorney fees pursuant to Fed. R. App. P.38. This court has indicated its disapproval of frivolous appeals in tax protestor cases and its intention to impose Rule 38 sanctions. See, e.g. Martin v. Commissioner, 756 F. 2d 38 (6th Cir. 1985); Martin v. Commissioner, 753 F.2d 1358 (6th Cir. 1985); Perkins v. Commissioner, 746 F. 2d 1187 (6th Cir. 1984) (per curiam) Southwell's petition and appeal are frivolous and assert positions which have been uniformly rejected by this court and other courts. Moreover, the tax court judge expressly cautioned Southwell not to pursue his frivolous case any further. Under the circumstances, the award of costs and attorney's fees is appropriate.

Accordingly, the tax court's order is affirmed pusuant to Rule 34(j)(2)(C), Riles of the Sixth Circuit and pursuant to Fed. R. App. P. 38, costs and attorney fees are assessed against Southwell in the amount of $2000.

ENTERED BY ORDER OF THE COURT
"s/ Leonard Green "
Clerk

APPENDIX A

1497-98

UNITED STATES TAX COURT
WASHINGTON, D.C.

RAY GEORGE SOUTHWELL I PETITIONER,	)
V.	)
	) Docket No. 1497-98
COMMISSIONER OF INTERNAL REVENUE RESPONDENT,	)

ORDER OF DISMISSAL AND DECISION

On November 7,1997, respondent issued separate notices of deficiency to petitioner determining deficiencies in and additions to his Federal income taxes 1992, 1993, 1994, and 1995. (Section references are to sections of the Internal Revenue Code, as amended. Rule references are to the Tax Court Rules of Practice and procedures.) Respondent determined that petitioner failed to report nonemployee compensation and wages that he earned during the taxable years 1992 through 1995.

Petitioner filed a timely petition for redetermination with the Court on January 26, 1998. The petition states: " I owe no additional tax or penalty or interest because of religious, moral, and conscientious grounds." At the time the petition was filed, petitioner resided in Alanson, Michigan.

On March 13, 1998, respondent filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted. By Order dated March 17,1998 petitioner was directed to file a proper amended petition setting forth with specificity each error allegedly made by respondent in the determination of the deficiencies and separate statements of every fact upon which the assignments of error are based.

On March 30, 1998, petitioner filed an amendment to petition repeating the allegations contained in the petition. On the same date, petitioner filed an objection to the Court's Order dated March 17,1998, insofar as respondent's motion to dismiss was set

for hearing in Washington, D.C. On April 20,1998, petitioner filed a response to respondent's motion to dismiss repeating the allegations contain in the petition and asserting that he has a constitutional right to stop paying taxes because the Government is corrupt and unjust.

Rule 34 (b) (4) requires that a petition filed in this Court contain clear and concise assignments of each and every error which the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency and the additions to tax in dispute. Rule 34 (b) (5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. See Jarvis v. Commissioner, 78 T.C. 646, 658 (1982).

The petition and amendment to petition filed in this case do not satisfy the requirements of Rule 34 (b) (4) and (5). Although petitioner states that he disagrees with respondent's determinations, there is neither assignment of error nor allegation of fact in support of any justiciable claim. Rather, there is nothing but tax protester rhetoric and legalistic gibberish, as demonstrated by the summary of the petition provided above. Under the circumstances, we see no need to catalog petitioner's arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417 (5th cir.1984).

Because the petition and amendment to petition fail to state a claim upon which relief can be granted, we will grant respondent's motion to dismiss this case. See Scherping v. Commissioner, 747 F.2d 478 (8th Cir, 1984); Rules 34 (a) (1),123 (b).

Section 6673 (a) (1) authorizes the Tax Court to require a taxpayer tp pay to the United States a penalty not in excess of $25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless.

We will not impose a penalty upon patitioner pursuant to section 6673 (a) (1). Nevertheless, we admonish petitioner that the Court will consider imposing such a penalty should petitioners return to the Court and advance similar arguments in the future.

APPENDIX B

Upon due consideration and for cause, it is hereby

Ordered: That respondent's Motion to dismiss for failure to State a Claim upon which Relief Can Be Granted, filed March 13, 1998, is granted. It is further

Ordered and decided: That petitioner is liable for deficiencies in and additions to his Federal income taxes for the years and in the amounts as follows:

		Additions to Tax	
Year	Deficiency	Sec. 6651 (a)	Sec. 6654 (a)
1992	$2,884	$721	$124
1993	5,157	1,289	215
1994	749	187	-----
1995	926	175	-----

"s/ Peter J. Panuthos "
Chief Special Trial Judge

Entered April 27, 1998

APPENDIX B

UNITED STATES TAX COURT
400 SECOND STREET, N. W.
WASHINGTON D.C.

Ray Southwell, I
P.O. Box 445
Alanson, MI. 49706

NOTIFICATION OF RECEIPT OF PETITION

Docket No. : 1497-98

Name of Case: Ray George Southwell, I

On January 26,1998 the Court received and filed a PETITION in the above case.

Further :
(X) filing fee paid
(X) Designation of place of Trial filed for Detroit, MI

All papers and correspondence MUST bear the DOCKET NUMBER given above.

Charles S. Casazza

Clerk of the Court

Date: January 28,1998

APPENDIX C

UNITED STATES TAX COURT

RAY GEORGE SOUTHWELL I,	)	
	)	
Petitioner,	)	
	)	
V.	)	Docket No. 1497-98
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent.	)	

Petitioner objection to Tax Court order, dated March 17,1998

The Petitioner (hereafter referred to as citizen) object's to the location and date of hearing to consider Respondent (hereafter referred to as IRS) Motion to Dismiss.

This Citizen cannot be present for hearing and respectively submit's my objections to the order:

1. Short notice concerning hearing. This Citizen received the Court order less than 30 days prior to the hearing date. (March 24,1998) In United States Tax Court publication dated November 1990 "Election of small Tax Case Procedure and preparation of Petitions." U.S. Government Printing Office 1996 415-629/60211, pg 6 states "Trial sessions will be announced and a notice of trial will be sent to you about 60 days before trial date." This statement implies a 60 day notice for all hearing dates. If the Court dismisses this case, the hearing in fact is a trial. Unfortunately my schedule makes it impossible to be in attendance at this important hearing.

2. Distance where Citizen resides to location of hearing. (Washington D.C.) IRS form publication 5 (Rev 11/90) Catalog Number 460741 under Tax Court section it states "The Court will schedule your case for trial at a location convenient to you." This implies that all hearings will be at the most convenient location to this Citizen. Once again, if the Court dismisses this case, this hearing in fact is a trial. While Detroit is 300 miles away, it is my closest location and this Citizen

has made tentative plans for hearings at that location.

3. My ability to express my thought's regarding this motion can be best expressed with verbal interaction. I have a disability in expressing myself in writing in comparison to the IRS attorney admitted to practice in this Court. Not knowing the expectation's of the IRS presentation makes it very difficult to communicate in writing my thought's and argument's.

Recognizing the power of the Court, this citizen will submit in writing, as ordered- citizen statement regarding the IRS Motion to Dismiss on or before April 22,1998.

Dated March 25,1998

Ray Southwell
Citizen
Box 445
Alanson, Michigan 49706

APPENDIX D